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U.S. Citizenship
and Immigration
Services

B5

FILE: LIN 03 239 53181

Office: NEBRASKA SERVICE CENTER

Date: JUN 03 2005

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a research associate at the University of Iowa. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

We note that the petitioner seeks classification as an alien of exceptional ability. The petitioner holds a doctorate in physical and analytical chemistry from the University of Southern California (USC), and his occupation qualifies as a profession under the regulatory definition offered at 8 C.F.R. § 204.5(k)(2). Thus, quite apart from the petitioner's claim of exceptional ability, the petitioner readily qualifies as a member of the professions holding an advanced degree. Therefore, there is no dispute that the petitioner qualifies for the immigrant classification sought; additional consideration of the criteria for an alien of exceptional ability would add nothing of substance to this decision. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner states: "I have established an international reputation for exceptional ability in Heterogeneous Catalysis. . . . I am a superior researcher who will advance the national interest."

The petitioner submits several witness letters. In a copy of a letter dated March 22, 2002 (over 17 months before the petition's August 2003 filing date), Professor [REDACTED]

I am [writing this letter] in my capacity as [the petitioner's] supervisor. I have worked with [the petitioner] essentially every day for the last six years.

[The petitioner] was initially my graduate student at Texas A&M University, and he came with me when I accepted my present position at USC. He remains in my laboratory as an essential member of my research team. . . . He has published a very large number of outstanding papers in very prestigious chemical journals. These papers are very highly cited and will be increasingly cited in the future. [The petitioner's] work on methanol-to-olefin catalysis is helping form the basis of a very large new component of the US petrochemical industry.

The petitioner documents his co-authorship of 23 published articles, all but two of which were collaborations with Prof. Haw. The petitioner initially indicated that these articles have been cited an aggregate total of 110 times in 73 articles.

The petitioner submits copies of three pieces of varying length from *Chemical & Engineering News* discussing catalytic chemistry. The articles only briefly mention the petitioner, but we note that one article, presented as the top story in the April 22, 2002 issue, focuses on an article of which the petitioner was the lead author. The news story indicates that the article is "sure to spark controversy in catalysis circles." This corroborates the claim that the study itself, if not the petitioner *per se*, attracted attention within the field.

[REDACTED] a consultant to USC's Loker Hydrocarbon Research Institute and a former senior scientist at Mobil Technology Company, states:

[The petitioner] is one of the finest of the younger generation of magnetic resonance spectroscopists to come along in recent years. His insightful studies of zeolite chemistry using *in situ* Solid State NMR spectroscopic techniques, which he helped create as a member of Professor [REDACTED] group, is at the cutting edge of the science, and provides an unprecedented view of heterogeneous catalysis at the molecular level.

Professor [REDACTED] Prakash of USC, scientific co-director of the Loker Hydrocarbon Research Institute, states:

[The petitioner] has . . . pioneered techniques to study reactive and short lived intermediates using solid state NMR [nuclear magnetic resonance] techniques. His work has the potential to solve some of the fossil fuel crisis that the US faces today. . . .

I am absolutely sure that [the petitioner's] R&D contributions to methanol to higher hydrocarbons will continue to make unprecedented and significant advances in the fundamental knowledge of the field. . . . His innovative research is substantially contributing to the field as well as resulting in significant benefits to the United States.

Professor [REDACTED] of Northwestern University states that the petitioner "collaborated with my group on a research project which enabled us, for the first time, to observe a stable carbenium ion in zeolite pores with Raman Spectroscopy." Prof. Stair asserts:

[The petitioner] has done outstanding work to study the methanol to olefins (MTO) conversion chemistry. MTO conversion is both economically and technologically very important for the U.S. because of its impact on the chemical industry, especially the polymer industry. . . . MTO technology has been investigated by many research groups all over the world during the last twenty years to understand the mechanism of MTO and to improve the yield of light olefins, especially ethylene. [The petitioner's] work is at the frontier of this research field. His findings strongly support a co called "hydrocarbon pool" mechanism.

The above witnesses have collaborated directly with the petitioner. Other witnesses, however, indicate that the petitioner's reputation has extended beyond his circle of collaborators. Professor [REDACTED] of the University of Stuttgart, who describes himself as "one of the world's leading authorities in chemistry," states:

I am familiar with [the petitioner's] research because my research group at the University of Stuttgart has also focused on heterogeneous catalysis and methanol conversion, an area in which he has conducted outstanding research. I am well aware of the remarkable nature of his studies and routinely analyze them as they appear in journals with an international circulation. . . . In many of our own published papers, [the petitioner's] papers were cited because his findings are considered seminal in our field of study. . . .

[The petitioner's] work has been so widely acknowledged as groundbreaking because it has been instrumental in providing a better understanding of the use of catalysts in fossil fuel manufacture and transforming the petrochemical industry. . . . His reputation as a leader in this vital research area is unmatched.

Professor [REDACTED] of North Carolina State University states "I repeatedly find myself scouting the literature for the latest results from [the petitioner's] research efforts. While in some cases I have discovered that [the petitioner's] research has corroborated our own efforts, more often I find completely new discoveries that push us in new directions." Dr. [REDACTED] of Japan's Council for Science and Technology Policy affirms that the petitioner's work is distinguished by the "attention that it has received from the international community and the impact that it has had on the scientific community's basic understanding of MTH [methanol to hydrocarbon conversion chemistry]."

The director issued a request for evidence, stating that the petitioner has established the importance of his field of endeavor, but not that it would serve the national interest to waive the job offer requirement that normally applies to the classification sought. The director acknowledged the articles from *Chemical & Engineering News*, but noted that these articles did not single out the petitioner or his individual work. The director stated that statements from individuals outside of the petitioner's circle of collaborators and mentors would be particularly valuable.

The director also requested information of questionable relevance, for example requiring the petitioner to "[p]rovide documentation that demonstrates that the University of Iowa is recognized as the most advanced and productive MTH and heterogeneous catalysis research facility in the United States or the world" (director's emphasis). Such evidence would not be dispositive, because an alien does not automatically qualify for a waiver by working at a top laboratory, and the waiver is not limited to researchers at the one top research facility in a given field or specialty. Such a standard is far too restrictive, and can easily lead to confusion as there exists no one single standard by which laboratories could be thus ranked.

In response to the director's notice, the petitioner has submitted additional letters and documentation. Professor [REDACTED] of Texas A&M University states "I know of [the petitioner] primarily from his publications," although the petitioner had previously studied at Texas A&M University. Prof. [REDACTED] states that the petitioner's "publications reflect his exceptional technical skills and represent a major contribution to our understanding of the mechanisms of zeolite catalyzed chemical reactions." He concludes that the petitioner's "past and present research is evidence that he will continue to influence the field of catalysis research to a greater extent than most of his peers."

Professor [REDACTED] of the University of Oslo states "I have followed [the petitioner's] publications on the MTH chemistry for years. . . . [The petitioner] is a talented scientist with proven outstanding research accomplishments." Dr. [REDACTED] of the Environmental Protection Agency's National Center for Environmental Research states that the petitioner "is pursuing a practical goal of a 'green' nanotechnology that applies this fast-developing technology for a cleaner environment. . . . [The petitioner] has made rapid progress for the program in a short time."

A new citation listing, attributed to the Institute for Scientific Information, indicates 123 citations of the petitioner's work.

The director denied the petition, stating that the evidence establishes that the petitioner is a competent and respected scientist, but not that he stands out to an extent that would justify a special waiver of the job offer requirement that normally attaches to the classification sought.

The most recent citation information, provided on appeal, shows 160 citations of 22 of the petitioner's articles, demonstrating the petitioner's continuing, and arguably growing, influence in the field. Witnesses

from several different countries attest to the petitioner's international reputation in his field, and many witnesses specifically assert that they have never met the petitioner and know of him only through his published work. This is *prima facie* evidence of a reputation that extends beyond the petitioner's immediate circle of professors, employers and collaborators. The director does not appear to have given sufficient consideration to this facet of the record, i.e., that independent, international witnesses agree that the petitioner has been a major contributor to important, newsworthy, and heavily-cited research within his particular specialty.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.